

must be enforceable as a practical matter.

Synthetic minor source means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in Appendix S, but that has taken a restriction such that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

§ 49.168 Does this program apply to me?

(a) In a nonattainment area for a pollutant in Indian country, the requirements of this program apply to you under either of the following circumstances:

(1) If you propose to construct a new major source (as defined in part 51, Appendix S, paragraph II.A.4 of this chapter) of the nonattainment pollutant.

(2) If you propose to construct a major modification at your existing major source (as defined in part 51, Appendix S, paragraph II.A.5 of this chapter), where your source is a major source of the nonattainment pollutant and the proposed modification is a major modification for the nonattainment pollutant.

(b) If you own or operate a major source with a state-issued nonattainment major NSR permit, you must apply to convert such permit to a Federal permit under this program by September 4, 2012.

(c) If you propose to establish a synthetic minor source or synthetic minor HAP source or to construct a minor modification at your major source, you will have to comply with the requirements of the Federal minor NSR program in Indian country at §§ 49.151 through 49.165 or other EPA-approved minor NSR program, as applicable.

49.169 Permit approval criteria.

(a) *What are the general criteria for permit approval?* The general review criteria for permits are provided in part 51, Appendix S, paragraph II.B of this chapter. In summary, that paragraph basically requires the reviewing authority to ensure that the proposed new major source or major modification would meet all applicable emis-

sion requirements in the EPA-approved implementation plan or FIP, any applicable new source performance standard in part 60 of this chapter and any applicable national emission standards for hazardous air pollutants in part 61 or part 63 of this chapter, before a permit can be issued.

(b) *What are the program-specific criteria for permit approval?* The approval criteria or conditions for obtaining a major NSR permit for major sources and major modifications locating in nonattainment areas are given in part 51, Appendix S, paragraph IV.A of this chapter. In summary, these are the following:

(1) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to this program.

(2) Certification that all existing major sources owned or operated by you in the same state as the state including the Tribal land where the proposed source or modification is locating are in compliance or under a compliance schedule.

(3) Emissions reductions (offsets) requirement for any source or modification subject to this program.

(4) A demonstration that the emission offsets will provide a net air quality benefit in the affected area.

(5) An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

§ 49.170 Emission offset requirement exemption.

An Indian governing body may seek an exemption from the emission offset requirement (*see* § 49.169(b)(3)) for major sources and major modifications subject to this program that are located within the Tribe's Indian country pursuant to section 173(a)(1)(B) of the Act, under which major sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the Administrator, in consultation with the Department of Housing and